

EXHIBIT 48

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1
2 IN THE UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----)
5 In re)
6) Chapter 11
7 LEHMAN BROTHERS) Case No.
8 HOLDINGS INC., et al.,) 08-13555 (JMP)
9 Debtors.) (Jointly Administered)
10 -----)

11
12 VIDEO DEPOSITION UPON ORAL EXAMINATION
13 of

14 PAMELA KENDALL

15
16 On Thursday, 20th June 2013

17 Taken at the offices of:
18 Weil Gotshal & Manges LLP,
19 110 Fetter Lane,
20 London EC4A 1AY,
21 England

22
23
24 Reported by: Richard Harper
25

<p style="text-align: right;">38</p> <p>1 PAMELA KENDALL</p> <p>2 MR. DE LEEUW: Objection. Asked</p> <p>3 and answered. Go ahead.</p> <p>4 A. There was no uncertainty in our</p> <p>5 minds that LBHI did not want to take up the lease</p> <p>6 on the original basis. It was no surprise to us</p> <p>7 that LBHI declined that offer to take up a new</p> <p>8 lease.</p> <p>9 BY MR. ISAKOFF:</p> <p>10 Q. Had a formal notice under section</p> <p>11 7(a) of Schedule 4 of the lease ever even been</p> <p>12 drafted?</p> <p>13 A. I don't know.</p> <p>14 Q. Who would know if you do not?</p> <p>15 A. I am not aware that one was</p> <p>16 drafted.</p> <p>17 Q. I am handing you the exhibit that</p> <p>18 was previously marked as exhibit 15. Can you</p> <p>19 identify that please, Ms. Kendall?</p> <p>20 A. This is the agreement with JPM, in</p> <p>21 relation to the sale of HQ2.</p> <p>22 Q. Would you turn please to page 35 of</p> <p>23 that agreement. At the bottom, section 11.3.2, it</p> <p>24 begins "The seller". Do you see that?</p> <p>25 A. I do.</p>	<p style="text-align: right;">40</p> <p>1 PAMELA KENDALL</p> <p>2 the Lehman Lease." That statement was a true</p> <p>3 statement when made in December 2010, correct?</p> <p>4 A. Correct. I mean, my recollection</p> <p>5 is that JPM didn't want anything hanging over the</p> <p>6 building as such so, to the extent that</p> <p>7 implementation, a formal implementation of 7(a)</p> <p>8 could in some way delay proceedings, or mean there</p> <p>9 was a possibility that LBHI may take a new lease,</p> <p>10 even a technical possibility, because we knew that</p> <p>11 they did not want one, they didn't want that to be</p> <p>12 a possibility. They wanted it cleared. Since we</p> <p>13 had had the exchange of e-mails it was perfectly</p> <p>14 clear to us that LBHI did not want a new lease and</p> <p>15 we could give the warranty to JPM because there</p> <p>16 was no need to serve a formal notice as such.</p> <p>17 Q. My question was much simpler than</p> <p>18 the answer you went on to give?</p> <p>19 A. I am sorry.</p> <p>20 Q. Let me just see if I can get a</p> <p>21 clean answer, without the commentary that goes</p> <p>22 well beyond the scope of the question. Is it a</p> <p>23 true statement that, as of December 20, 2010, as</p> <p>24 warranted here, no notice or demand has been</p> <p>25 served on or given to LBHI pursuant to paragraph</p>
<p style="text-align: right;">39</p> <p>1 PAMELA KENDALL</p> <p>2 Q. Who was the seller?</p> <p>3 A. The Canary Wharf companies here,</p> <p>4 HQCB Investments Limited.</p> <p>5 Q. This provision says: "The Seller</p> <p>6 hereby warrants that no notice or demand has been</p> <p>7 served on or given to LBHI pursuant to paragraph</p> <p>8 7(a) of Schedule 4 to the Lehman Lease." Do you</p> <p>9 see that?</p> <p>10 A. I do.</p> <p>11 Q. Was that warrantee true when made?</p> <p>12 A. Yes.</p> <p>13 Q. And it is true today too, isn't it?</p> <p>14 A. In the sense of a formal notice,</p> <p>15 yes.</p> <p>16 Q. The warranty was true when it was</p> <p>17 made in this document, correct?</p> <p>18 A. Yes, we had no problem giving this</p> <p>19 warranty, because of the exchange of e-mails. We</p> <p>20 knew that LBHI had no interest in taking up a new</p> <p>21 lease so, to us, we were happy to give that</p> <p>22 warranty.</p> <p>23 Q. And the warranty says: "That no</p> <p>24 notice or demand has been served on or given to</p> <p>25 LBHI pursuant to paragraph 7(a) of Schedule 4 to</p>	<p style="text-align: right;">41</p> <p>1 PAMELA KENDALL</p> <p>2 7(a) of Schedule 4 to the Lehman lease. Was that</p> <p>3 a true statement when made?</p> <p>4 A. No formal notice had been served.</p> <p>5 Q. So this was a true statement when</p> <p>6 made?</p> <p>7 A. Correct.</p> <p>8 Q. It is also true that, since</p> <p>9 December 20, 2010, no notice or demand as been</p> <p>10 served on or given to LBHI pursuant to paragraph</p> <p>11 7(a) of Schedule 4 to the Lehman lease, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And It is also true that, at no</p> <p>14 time in the 180 day period after forfeiture</p> <p>15 occurred on December 10th 2010, no notice or</p> <p>16 demand has been served on or given to LBHI</p> <p>17 pursuant to paragraph 7(a) of Schedule 4 to the</p> <p>18 Lehman lease, correct?</p> <p>19 MR. DE LEEUW: Objection to form.</p> <p>20 You can answer.</p> <p>21 A. Sorry, can you repeat that last</p> <p>22 question again?</p> <p>23 Q. It is also true that at no time in</p> <p>24 the 180 day period after forfeiture occurred on</p> <p>25 December 10, 2010, that no notice or demand has</p>

11 (Pages 38 to 41)

42	<p>1 PAMELA KENDALL</p> <p>2 been served on or given to LBHI pursuant to</p> <p>3 paragraph 7(a) of Schedule 4 to the Lehman lease,</p> <p>4 correct?</p> <p>5 MR. DE LEEUW: I withdraw my</p> <p>6 objection. I have no objection to the question.</p> <p>7 A. No formal notice has been served,</p> <p>8 correct.</p> <p>9 BY MR. ISAKOFF:</p> <p>10 Q. Was anything served on LBHI</p> <p>11 pursuant to paragraph 7(a) of Schedule 4 to the</p> <p>12 Lehman lease, formal or informal, in the 180 day</p> <p>13 period following December 10, 2010 when forfeiture</p> <p>14 occurred?</p> <p>15 A. No.</p> <p>16 Q. Was any lease ever drawn or</p> <p>17 drafted, I guess I should say, that was a</p> <p>18 counterpart of a new lease of the premises for</p> <p>19 LBHI's signature at any time in the fall of 2010</p> <p>20 or later?</p> <p>21 A. No.</p> <p>22 Q. Did you have anything do with the</p> <p>23 negotiation of the LBL lease or Schedule 4 of the</p> <p>24 lease?</p> <p>25 A. No.</p>	44	<p>1 PAMELA KENDALL</p> <p>2 MR. MEADE: That is the way it was</p> <p>3 produced.</p> <p>4 MR. DE LEEUW: Was it attached with</p> <p>5 a staple?</p> <p>6 MR. ISAKOFF: I will ask the</p> <p>7 witness.</p> <p>8 MR. DE LEEUW: I was trying to deal</p> <p>9 with what I thought was a technical, bureaucratic</p> <p>10 issue. Go ahead.</p> <p>11 BY MR. ISAKOFF:</p> <p>12 Q. Have you looked at the third page</p> <p>13 of this exhibit?</p> <p>14 A. I have.</p> <p>15 Q. Does that have any connection with</p> <p>16 the first two pages -- other than ---</p> <p>17 A. I do not know, but it appears not,</p> <p>18 because it is talking about an e-mail from</p> <p>19 Beatrice Taylor, and you have just given me an</p> <p>20 e-mail which went to Beatrice Taylor.</p> <p>21 Q. Okay. I will ask you a question or</p> <p>22 two about this third page. Who is Michael Ashley</p> <p>23 Brown?</p> <p>24 A. Michael Ashley Brown was joint head</p> <p>25 of the legal department at Canary Wharf.</p>
43	<p>1 PAMELA KENDALL</p> <p>2 Q. Do you know anything about</p> <p>3 negotiations on those subjects?</p> <p>4 A. No.</p> <p>5 (Exhibit 52 was marked for identification)</p> <p>6 Q. Ms. Kendall, I am showing you what</p> <p>7 has now been marked as exhibit 52, which is Bates</p> <p>8 stamped CW 0004 to 6. Can you identify this</p> <p>9 document?</p> <p>10 A. This is -- first of all, this is an</p> <p>11 e-mail Mandy Ridyard at Clifford Chance to</p> <p>12 Beatrice Taylor at Linklaters and Katie Bradford</p> <p>13 at Linklaters, cc-ed to myself among others, and</p> <p>14 it is attaching a letter regarding unpaid sums</p> <p>15 and, basically, saying that the tenants have gone</p> <p>16 into administration and that the administrators --</p> <p>17 acting for the administrators and asking for</p> <p>18 arrears to be paid ---</p> <p>19 MR. DE LEEUW: Is the third page</p> <p>20 supposed to be attached? It may have been</p> <p>21 attached in error, I don't know.</p> <p>22 MR. ISAKOFF: No, it is not</p> <p>23 attached in error. I don't know if there is a</p> <p>24 connection between these or not. I was going to</p> <p>25 ask that question.</p>	45	<p>1 PAMELA KENDALL</p> <p>2 Q. No longer?</p> <p>3 A. No longer.</p> <p>4 Q. Where is he now?</p> <p>5 A. He has retired.</p> <p>6 Q. Where does he reside?</p> <p>7 A. He reside?</p> <p>8 Q. Yes, if you know?</p> <p>9 A. I believe in Surrey.</p> <p>10 Q. Surrey?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Who is Paul Stallard?</p> <p>13 A. Paul Stallard is an employee of the</p> <p>14 company and he is -- I believe his title is head</p> <p>15 of treasury.</p> <p>16 Q. Do you know what e-mail that was</p> <p>17 being requested be deleted or destroyed is being</p> <p>18 referred to here?</p> <p>19 A. I don't.</p> <p>20 Q. What was your role, if any, in the</p> <p>21 JP Morgan transaction with Canary Wharf.</p> <p>22 (Interruption: Need to evacuate the building)</p> <p>23 MR. DE LEEUW: We will go off the</p> <p>24 record because we have been asked to evacuate the</p> <p>25 building.</p>

12 (Pages 42 to 45)

<p style="text-align: right;">46</p> <p>1 PAMELA KENDALL</p> <p>2 (Off the record at 10.36)</p> <p>3 (Back on the record at 10.54)</p> <p>4 MR. ISAKOFF: I am going to</p> <p>5 withdraw the question that I asked before the</p> <p>6 break that was not answered. We had a break there</p> <p>7 was an order to evacuate the building which,</p> <p>8 fortunately, did not last very long.</p> <p>9 BY MR. ISAKOFF:</p> <p>10 Q. Ms. Kendall, have you ever heard of</p> <p>11 something called the automatic stay, under US</p> <p>12 bankruptcy law?</p> <p>13 A. Yes, that rings a bell.</p> <p>14 Q. Okay. Were you made aware, or were</p> <p>15 you aware at any time, that service of a notice</p> <p>16 under section 7(a) of Schedule 4 of the LBL lease</p> <p>17 on LBHI would have been in violation of the</p> <p>18 automatic stay of the US Bankruptcy Code, absent</p> <p>19 court permission?</p> <p>20 A. I cannot recall exactly. I have</p> <p>21 heard mention of the automatic stay, but I cannot</p> <p>22 answer your question.</p> <p>23 Q. Now, you testified before the last</p> <p>24 break that you are not aware of any notice under</p> <p>25 section 7(a) having been drafted and you are not</p>	<p style="text-align: right;">48</p> <p>1 PAMELA KENDALL</p> <p>2 premises to another entity?</p> <p>3 A. We, grant a lease to another</p> <p>4 entity, of HQ2?</p> <p>5 Q. Yes?</p> <p>6 A. Well, we granted a 999 year lease</p> <p>7 to JPM by way of sale.</p> <p>8 Q. Okay. Were there any interim</p> <p>9 transactions where the landlord of the LBL lease</p> <p>10 transferred its leasehold to another entity,</p> <p>11 whether Canary Wharf or otherwise?</p> <p>12 A. I cannot recall specifics, but it</p> <p>13 would be usual for some title restructuring prior</p> <p>14 to the sale of the building.</p> <p>15 Q. Did all of the restructuring occur</p> <p>16 on or about December 20th 2010?</p> <p>17 A. It would occur prior to the sale,</p> <p>18 yes.</p> <p>19 Q. Did all of the transactions</p> <p>20 necessary for the sale take place simultaneously</p> <p>21 or on a single day?</p> <p>22 A. Not that I recall, and I believe</p> <p>23 I mentioned to you earlier that there were still</p> <p>24 some elements that we sorted out in January the</p> <p>25 following year.</p>
<p style="text-align: right;">47</p> <p>1 PAMELA KENDALL</p> <p>2 aware of any substitute lease for the LBL lease</p> <p>3 having been drafted. Are you aware of any motion</p> <p>4 for potential filing in the US bankruptcy court</p> <p>5 pertaining to serving a notice on LBHI or asking</p> <p>6 it to assume or reject a lease had been drafted?</p> <p>7 A. No.</p> <p>8 Q. Are you aware of whether LBHI was</p> <p>9 ever asked by Canary Wharf or any of its</p> <p>10 representatives to waive notice under section 7(a)</p> <p>11 at any time?</p> <p>12 A. No.</p> <p>13 Q. Who was it who decided not to send</p> <p>14 a notice under section 7(a) to LBHI?</p> <p>15 MR. DE LEEUW: Objection to form.</p> <p>16 A. I'm not sure that that ever came up</p> <p>17 as a, you know, "Should we serve a notice?" The</p> <p>18 exchange of e-mails had already taken place and</p> <p>19 there just didn't seem a need. I don't believe</p> <p>20 that huge consideration was given to service of a</p> <p>21 notice. We knew that LBHI did not want a lease of</p> <p>22 the premises.</p> <p>23 BY MR. ISAKOFF:</p> <p>24 Q. Did the landlord -- did LBL, as</p> <p>25 landlord, ever grant a lease of the demised</p>	<p style="text-align: right;">49</p> <p>1 PAMELA KENDALL</p> <p>2 Q. But is it fair to say that any</p> <p>3 transfer of title in anticipation of the sale to</p> <p>4 JP Morgan occurred on or before December 20th</p> <p>5 2010?</p> <p>6 A. Yes, I would expect that to be the</p> <p>7 case.</p> <p>8 Q. Okay. Let's go back to the subject</p> <p>9 that I started to ask you about before we took</p> <p>10 this last, asked to evacuate the building, break.</p> <p>11 What involvement, if any, did you have with</p> <p>12 respect to the JP Morgan transaction with Canary</p> <p>13 Wharf relating to HQ2?</p> <p>14 A. I was involved in -- with the</p> <p>15 agreement. I was also initially involved on the</p> <p>16 lease agreement, but that was actually negotiated</p> <p>17 and concluded by a colleague of mine. I was</p> <p>18 involved in ensuring that what had been agreed</p> <p>19 between the parties was properly reflected in the</p> <p>20 documentation, to the extent that documentation</p> <p>21 was under my remit.</p> <p>22 Q. Did you, yourself, have any direct</p> <p>23 interaction with JP Morgan Chase by way of</p> <p>24 telephone conversations, meetings or</p> <p>25 correspondence?</p>

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<p style="text-align: right;">54</p> <p>1 PAMELA KENDALL</p> <p>2 anybody other than your client Ms. Jones' point in</p> <p>3 the first paragraph of her e-mail to Tony Briam</p> <p>4 that their understanding was that under the US</p> <p>5 Bankruptcy Code Canary Wharf is prohibited from</p> <p>6 serving a notice requiring LBHI to take up a new</p> <p>7 lease?</p> <p>8 MR. DE LEEUW: When you say "your</p> <p>9 client", you mean counsel as well? You said,</p> <p>10 "Other than your client".</p> <p>11 MR. ISAKOFF: If she had a</p> <p>12 discussion with counsel yes, I would like to hear</p> <p>13 that.</p> <p>14 MR. DE LEEUW: Obviously do not</p> <p>15 disclose the substance of any communication.</p> <p>16 MR. ISAKOFF: I was not asking for</p> <p>17 that.</p> <p>18 A. Whether I have been in discussion</p> <p>19 relating to -- sorry, would you mind repeating the</p> <p>20 question again?</p> <p>21 BY MR. ISAKOFF:</p> <p>22 Q. The question is can you recall</p> <p>23 having any discussions with anybody concerning</p> <p>24 Ms. Jones' point in the first paragraph here that:</p> <p>25 Under the US Bankruptcy Code CW [Canary Wharf] is</p>	<p style="text-align: right;">56</p> <p>1 PAMELA KENDALL</p> <p>2 A. It is an e-mail from me to Daniel</p> <p>3 Ehrmann of Alvarez and Marsal. Yes, that is what</p> <p>4 it is.</p> <p>5 Q. Did you participate in the meeting</p> <p>6 that is referenced in the e-mail?</p> <p>7 A. No, I didn't.</p> <p>8 Q. Do you know what happened in the</p> <p>9 meeting?</p> <p>10 A. I understand that George and Peter</p> <p>11 met with Daniel Ehrmann, who was open to agreeing</p> <p>12 a settlement in relation to the LBHI claim, and</p> <p>13 that settlement to be based on three years' rent</p> <p>14 and from that, he was looking for information</p> <p>15 relating to the claim so that, presumably, the</p> <p>16 settlement could be agreed.</p> <p>17 Q. Do you know where the notion of a</p> <p>18 three year limitation comes from?</p> <p>19 A. The three years' rent, I believe,</p> <p>20 comes from the US Bankruptcy Code.</p> <p>21 Q. How do you know that?</p> <p>22 A. I have been told at some point. It</p> <p>23 is my understanding.</p> <p>24 Q. So did you have an understanding</p> <p>25 that the US Bankruptcy Code had some application</p>
<p style="text-align: right;">55</p> <p>1 PAMELA KENDALL</p> <p>2 prohibited from serving a notice requiring LBHI to</p> <p>3 take up a new lease." I will just ask that as a</p> <p>4 yes or not question and go from there.</p> <p>5 A. No, I cannot recall. I recall</p> <p>6 reference to the US Bankruptcy Code, as</p> <p>7 I mentioned to you earlier, but I cannot remember</p> <p>8 discussion on this particular point.</p> <p>9 Q. Have you ever read Canary Wharf's</p> <p>10 proofs of claim against LBHI?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know whether they refer to a</p> <p>13 breach of anticipatory breach of contract as a</p> <p>14 ground for a claim?</p> <p>15 A. I would have to look at them again.</p> <p>16 Q. I am handing you the exhibit that</p> <p>17 was previously marked as exhibit 25, which is CW</p> <p>18 34681 thru 85. Do you recognise the handwriting?</p> <p>19 A. No, I do not.</p> <p>20 Q. We have marked as exhibit 53 the</p> <p>21 document Bates stamped LBHI 4291 to 92. Ms.</p> <p>22 Kendall, have you ever seen this before?</p> <p>23 (Exhibit 53 was marked for identification)</p> <p>24 A. I have.</p> <p>25 Q. And what is it?</p>	<p style="text-align: right;">57</p> <p>1 PAMELA KENDALL</p> <p>2 in connection with your claims against LBHI?</p> <p>3 A. Well, at this point, Daniel Ehrmann</p> <p>4 had suggested to George and Peter that the three</p> <p>5 years' rent would be a way forward to agreeing the</p> <p>6 claim and, obviously, that was the basis of a</p> <p>7 compromise we were prepared to look at.</p> <p>8 Q. Now, when you learned that</p> <p>9 Mr. Ehrmann was suggesting that there was a three</p> <p>10 year limitation on rent claims, under the US</p> <p>11 Bankruptcy Code what, if anything, did you do to</p> <p>12 verify that representation?</p> <p>13 A. Can I just check with counsel,</p> <p>14 because I don't know whether this borders on</p> <p>15 matters of privilege or not.</p> <p>16 BY MR. ISAKOFF:</p> <p>17 Q. Okay.</p> <p>18 (Off the record at 11.17)</p> <p>19 (Back on the record at 11.18)</p> <p>20 A. In answer to your question, we took</p> <p>21 legal advice.</p> <p>22 BY MR. ISAKOFF:</p> <p>23 Q. And who did you take legal advice</p> <p>24 from?</p> <p>25 A. Skadden Arps.</p>

15 (Pages 54 to 57)

<p style="text-align: right;">58</p> <p>1 PAMELA KENDALL</p> <p>2 Q. Of which office?</p> <p>3 A. London office.</p> <p>4 Q. Did you take the advice of a US</p> <p>5 lawyer who was in the London office?</p> <p>6 A. I cannot recall. I recall that we</p> <p>7 obtained advice from Skadden Arps.</p> <p>8 Q. I am not going to ask you what the</p> <p>9 advice was but I would like to be able to ask</p> <p>10 about the subject matter of the advice, if I</p> <p>11 could.</p> <p>12 MR. DE LEEUW: That is fine.</p> <p>13 BY MR. ISAKOFF:</p> <p>14 Q. First of all, approximately when</p> <p>15 was it that you sought advice concerning the US</p> <p>16 Bankruptcy Code in connection with LBHI from</p> <p>17 Skadden Arps?</p> <p>18 A. Generally, Skadden Arps was</p> <p>19 retained by us when we filed proof of claim in the</p> <p>20 Chapter 11 proceedings and we retained Skadden</p> <p>21 Arps, initially, in relation to the claim.</p> <p>22 Q. Okay. Again, I am not going to ask</p> <p>23 you as to the content of the advice, but did you</p> <p>24 request advice from Skadden Arps on the subject</p> <p>25 matter of your claims and there being a three year</p>	<p style="text-align: right;">60</p> <p>1 PAMELA KENDALL</p> <p>2 you for the content of any advice, but I would</p> <p>3 like to know whether there was discussion</p> <p>4 concerning whether or not there was some form of</p> <p>5 durational cap on rent claims?</p> <p>6 A. Well, there was discussion over the</p> <p>7 point that Daniel Ehrmann had raised.</p> <p>8 Q. Okay. Was there any discussion</p> <p>9 with Skadden Arps at any time during 2010, again</p> <p>10 I am not seeking the content of it, but on the</p> <p>11 subject of serving a notice under section 7(a) of</p> <p>12 Schedule 4 of the lease?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Was there any discussion with your</p> <p>15 counsel at Skadden Arps on the subject, and again</p> <p>16 not seeking the content, concerning the automatic</p> <p>17 stay?</p> <p>18 A. I cannot recall.</p> <p>19 Q. So there may or may not have, you</p> <p>20 just don't recall?</p> <p>21 A. Yes.</p> <p>22 Q. And the same the true for a notice</p> <p>23 under section 7(a) of Schedule 4, that you do not</p> <p>24 know one way or the other?</p> <p>25 A. There was no discussion with</p>
<p style="text-align: right;">59</p> <p>1 PAMELA KENDALL</p> <p>2 cap under the Bankruptcy Code, as suggested by</p> <p>3 Mr. Ehrmann?</p> <p>4 MR. DE LEEUW: Object to form. Go</p> <p>5 ahead, you can answer.</p> <p>6 A. We certainly obtained advice from</p> <p>7 Scaddens generally on the claim.</p> <p>8 BY MR. ISAKOFF:</p> <p>9 Q. And did you do that at some time</p> <p>10 during 2010 when you were in discussions with</p> <p>11 LBHI?</p> <p>12 A. Yes.</p> <p>13 Q. Can you tell me whether you had any</p> <p>14 discussions yourself with anybody from Skadden</p> <p>15 Arps in 2010 concerning LBHI's claims?</p> <p>16 A. Yes.</p> <p>17 Q. How many such conversations did you</p> <p>18 have?</p> <p>19 A. I cannot recall.</p> <p>20 Q. Approximately?</p> <p>21 A. I cannot recall.</p> <p>22 Q. Would you say more than one?</p> <p>23 A. I cannot be certain but not very</p> <p>24 many.</p> <p>25 Q. Okay. Again, I am not going to ask</p>	<p style="text-align: right;">61</p> <p>1 PAMELA KENDALL</p> <p>2 Skaddens on.</p> <p>3 Q. Was there a point at which you</p> <p>4 stopped using Skadden Arps as counsel, with</p> <p>5 respect to the US Bankruptcy Code?</p> <p>6 A. There was.</p> <p>7 Q. When was that?</p> <p>8 A. I cannot recall.</p> <p>9 Q. Was it during 2010?</p> <p>10 A. Yes.</p> <p>11 Q. Who, if anybody, replaced Skadden</p> <p>12 Arps as your counsellors for bankruptcy issues?</p> <p>13 A. Initially, Clifford Chance and,</p> <p>14 subsequently, Sullivan and Cromwell.</p> <p>15 Q. Okay. And, again, without getting</p> <p>16 in to the subject matter -- without getting into</p> <p>17 the content of any discussions that you had with</p> <p>18 either Clifford Chance or Sullivan and Cromwell,</p> <p>19 was there any discussion with either one of them</p> <p>20 concerning section 7(a) of the bankruptcy -- I am</p> <p>21 sorry -- whether you could serve a notice under</p> <p>22 section 7(a) consistent with the Bankruptcy Code?</p> <p>23 MR. DE LEEUW: Objection to form.</p> <p>24 You can answer.</p> <p>25 BY MR. ISAKOFF:</p>

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<p style="text-align: right;">66</p> <p>1 PAMELA KENDALL</p> <p>2 concluded deal, so -- and further, there were</p> <p>3 confidentiality provisions with JPM. There was no</p> <p>4 decision to take. It was not something that was</p> <p>5 in the forefront of our minds.</p> <p>6 Q. Is it fair to say that Canary Wharf</p> <p>7 did not advise LBHI, for whatever reason, in</p> <p>8 August 2010 concerning any aspect of the potential</p> <p>9 transaction with JP Morgan Chase, whether by name</p> <p>10 or otherwise?</p> <p>11 A. Yes.</p> <p>12 Q. Is it fair to say that the same was</p> <p>13 true in September?</p> <p>14 A. Yes.</p> <p>15 Q. Is it fair to say that the same was</p> <p>16 true in October of 2010?</p> <p>17 A. Yes, I believe so.</p> <p>18 Q. Is it fair to say that the same was</p> <p>19 true in November, until information concerning the</p> <p>20 transaction leaked to the press?</p> <p>21 A. In November -- there was</p> <p>22 information in the press as early as September.</p> <p>23 There was no secret about the JPM transaction in</p> <p>24 the sense that we were, you know, hiding</p> <p>25 something. We just had confidentiality provisions</p>	<p style="text-align: right;">68</p> <p>1 PAMELA KENDALL</p> <p>2 information that went into the press in late</p> <p>3 November 2010?</p> <p>4 A. No.</p> <p>5 Q. It wasn't you?</p> <p>6 A. No.</p> <p>7 Q. If you will return please to</p> <p>8 exhibit 54, we were looking at this e-mail from</p> <p>9 Mr. Jervis to you on August 6th. There is a</p> <p>10 suggestion here in the e-mail that LBHI, Canary</p> <p>11 Wharf, LBL's administrators and AIG entered into</p> <p>12 some kind of group discussion surrounding the</p> <p>13 surrender of the HQ2 lease. Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Did that ever happen?</p> <p>16 A. Well, there wasn't a group</p> <p>17 discussion, no.</p> <p>18 Q. What, if anything, did you do to</p> <p>19 bring such a discussion about?</p> <p>20 A. I didn't.</p> <p>21 Q. Why not?</p> <p>22 A. This was raised by Mike Jervis at</p> <p>23 PWC.</p> <p>24 Q. I can see that. Why didn't you try</p> <p>25 to organise a group discussion on the subject?</p>
<p style="text-align: right;">67</p> <p>1 PAMELA KENDALL</p> <p>2 that we observed and we -- when LBHI asked for</p> <p>3 details of the JPM transaction we provided those</p> <p>4 details.</p> <p>5 Q. Is it fair to say, and this is my</p> <p>6 question, that nothing was said to LBHI concerning</p> <p>7 any aspect of the transaction with JP Morgan Chase</p> <p>8 prior to the time it appeared in the press</p> <p>9 identifying JP Morgan by name in late November</p> <p>10 2010?</p> <p>11 A. Well, nothing was provided prior to</p> <p>12 the date when LBHI asked for further information</p> <p>13 about JPM.</p> <p>14 Q. And that didn't occur until after</p> <p>15 the information concerning the JP Morgan</p> <p>16 transaction was leaked to the press by somebody in</p> <p>17 late November 2010, correct?</p> <p>18 A. Yes, but can I add that the</p> <p>19 transaction, the proposed transaction had already</p> <p>20 been in the press in September.</p> <p>21 Q. Had JP Morgan been identified at</p> <p>22 that point?</p> <p>23 A. In -- yes, the press picked up on</p> <p>24 rumours.</p> <p>25 Q. Do you know who leaked the</p>	<p style="text-align: right;">69</p> <p>1 PAMELA KENDALL</p> <p>2 A. Well, he was raising point and he</p> <p>3 had talked to Daniel Ehrmann, and the response was</p> <p>4 that Daniel Ehrmann was supportive.</p> <p>5 Q. Okay. What, if anything, did you</p> <p>6 do to further that idea?</p> <p>7 A. I cannot recall.</p> <p>8 Q. Is it fair to say that you didn't</p> <p>9 do anything?</p> <p>10 A. I cannot recall.</p> <p>11 Q. On the first page at the bottom</p> <p>12 there is another e-mail from Mr. Jervis to you and</p> <p>13 he says in the second line that: "There is an</p> <p>14 impasse at present between lehman and canary."</p> <p>15 Do you know what he is talking about there?</p> <p>16 A. I cannot be certain.</p> <p>17 Q. Do you recall that there was some</p> <p>18 impasse concerning what would happen at the time</p> <p>19 Nomura vacated the building -- strike that. Do</p> <p>20 you recall that there was some impasse about what</p> <p>21 would happen on September 30th 2010?</p> <p>22 A. I do.</p> <p>23 Q. What is your recollection?</p> <p>24 A. I recall that LBL, in</p> <p>25 administration, wanted to lock up and leave the</p>

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<p style="text-align: right;">70</p> <p>1 PAMELA KENDALL</p> <p>2 building and that, obviously, caused us concern,</p> <p>3 in terms of management and maintenance and</p> <p>4 security relating to HQ2, not least because there</p> <p>5 were sub-tenants in the building.</p> <p>6 Q. Do you know whether LBHI had</p> <p>7 anything to do with that issue?</p> <p>8 A. No, they didn't.</p> <p>9 Q. I am handing you what was</p> <p>10 previously marked as exhibit 46, which is CW 1546</p> <p>11 to 55, which is a cover letter in the MOU between</p> <p>12 Canary Wharf and JP Morgan Chase on August 13th</p> <p>13 2010. Have I accurately described the document?</p> <p>14 A. It is a cover letter to Jeremy</p> <p>15 Clay, Mayer Brown, JPM's counsel, and it is in the</p> <p>16 memo of understanding.</p> <p>17 Q. If you will turn please to page 3</p> <p>18 of the MOU, there is a paragraph a little bit down</p> <p>19 which has a small (b) next to it, called:</p> <p>20 "'Lehman condition' being the valid termination of</p> <p>21 the Lehman Lease (whether by surrender, forfeiture</p> <p>22 or disclaimer)." Then going on. Had there been a</p> <p>23 determination as at the time of this MOU as to how</p> <p>24 the Lehman lease would be validly terminated?</p> <p>25 A. I believe that we were talking in</p>	<p style="text-align: right;">72</p> <p>1 PAMELA KENDALL</p> <p>2 simultaneously on the date [(the 'Completion</p> <p>3 Date')] which shall be the tenth working day</p> <p>4 following the date of satisfaction of the last of</p> <p>5 the Conditions Precedent to be fulfilled or (in</p> <p>6 the case of the AIG condition only) the date of</p> <p>7 waiver by the Seller (to the extent permitted)."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Would this effectively require that</p> <p>11 completion take place during calendar year 2010 as</p> <p>12 being within ten working days of the expiry date</p> <p>13 of December 15th?</p> <p>14 MR. DE LEEUW: Objection to form.</p> <p>15 A. Yes. I am looking at 4.4 and I see</p> <p>16 that it was a "reasonable endeavours" to satisfy</p> <p>17 everything by the expiry date.</p> <p>18 BY MR. ISAKOFF:</p> <p>19 Q. Okay, the concept of a long stop?</p> <p>20 A. Yes, there is the concept of a long</p> <p>21 stop date.</p> <p>22 Q. Okay, and the concept of a long</p> <p>23 stop date being December 31 was clear by the time</p> <p>24 of Mr. Iacobescu's memorandum to the board of</p> <p>25 October 28th that we looked at earlier, correct?</p>
<p style="text-align: right;">71</p> <p>1 PAMELA KENDALL</p> <p>2 terms of a surrender.</p> <p>3 Q. Now, there is a reference in the</p> <p>4 last line there to the "Expiry Date". When was</p> <p>5 that? I believe it is defined on the next page at</p> <p>6 paragraph 4.4?</p> <p>7 A. 15th December 2010.</p> <p>8 Q. What reason was there, if you can</p> <p>9 recall, for there being an expiry date in December</p> <p>10 2010?</p> <p>11 A. That was something that was driven</p> <p>12 by JP Morgan. We were all very conscious that</p> <p>13 there was a window to do the deal with them and</p> <p>14 I cannot recall, and I don't know what that reason</p> <p>15 was.</p> <p>16 Q. Was it JP Morgan's consistent</p> <p>17 position through 2010 that the deal had to be</p> <p>18 completed in 2010?</p> <p>19 MR. DE LEEUW: Objection to form.</p> <p>20 A. That is my recollection.</p> <p>21 BY MR. ISAKOFF:</p> <p>22 Q. If you will go down to paragraph</p> <p>23 5.1 on that same page under the heading</p> <p>24 "Completion" it says in 5.1: "Completion of the</p> <p>25 Transaction [(Completion)] will take place</p>	<p style="text-align: right;">73</p> <p>1 PAMELA KENDALL</p> <p>2 A. Yes.</p> <p>3 Q. You are -- you have been practising</p> <p>4 in the field of real estate transactions, correct?</p> <p>5 A. Correct.</p> <p>6 Q. What does it mean in section 5.1,</p> <p>7 from a practical standpoint, for completion of the</p> <p>8 transaction to take place simultaneously; what</p> <p>9 does that mean?</p> <p>10 A. At the same time.</p> <p>11 Q. The same time as what?</p> <p>12 A. Well, whatever is to be</p> <p>13 simultaneous with -- are you asking me this on a</p> <p>14 general basis or what exactly it says ----</p> <p>15 Q. What does it mean for completion to</p> <p>16 occur simultaneously in UK real estate legal</p> <p>17 parlance?</p> <p>18 A. At the same time.</p> <p>19 Q. In other words, all of the steps</p> <p>20 needed to close the transaction and effectuate</p> <p>21 payment would occur on a single day?</p> <p>22 MR. DE LEEUW: Objection to form.</p> <p>23 A. Yes. I mean, it does not matter</p> <p>24 that the steps have not taken place -- sorry, it</p> <p>25 does not require all the steps to take place if</p>

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<p style="text-align: right;">98</p> <p>1 PAMELA KENDALL</p> <p>2 MR. DE LEEUW: Objection.</p> <p>3 A. That the claim would be zero,</p> <p>4 correct.</p> <p>5 BY MR. ISAKOFF:</p> <p>6 Q. Did Canary Wharf seek to change</p> <p>7 that term of the deal at some point?</p> <p>8 A. As negotiations progressed, we</p> <p>9 became caught, if you like, between LBHI and LBL</p> <p>10 and, in seeking to resolve settlement with LBHI,</p> <p>11 we were asked to sign a stipulation which,</p> <p>12 effectively, stated that we had not agreed a claim</p> <p>13 in the LBL administration of less than the figure</p> <p>14 that we were seeking to settle with LBHI. So at</p> <p>15 that point we showed LBL the stipulation and we</p> <p>16 put the claim amount that we were seeking against</p> <p>17 LBHI in the documentation with LBL.</p> <p>18 Q. And when you put that figure in the</p> <p>19 documentation with LBL, that was asking them to</p> <p>20 agree to a claim in approximately £262.5 million,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. You did recognise that that was a</p> <p>24 change in what had been agreed on September 30th,</p> <p>25 the day you say they were threatening to lock the</p>	<p style="text-align: right;">100</p> <p>1 PAMELA KENDALL</p> <p>2 unpaid amounts on the LBL lease?</p> <p>3 MR. DE LEEUW: Still objection to</p> <p>4 form.</p> <p>5 A. Unpaid amounts on the LBL lease,</p> <p>6 well they had ceased paying their rent, they</p> <p>7 ceased in part in January of that year and they</p> <p>8 stopped paying the rent entirely as of March.</p> <p>9 BY MR. ISAKOFF:</p> <p>10 Q. My question is, do you know how</p> <p>11 much was outstanding in respect of the LBL lease</p> <p>12 as of September 30, 2010, counting all payments</p> <p>13 that had been made, whether by LBL itself or by</p> <p>14 sub-tenants?</p> <p>15 A. Well, the amounts that were owed by</p> <p>16 LBL -- I would have to look at the documents to be</p> <p>17 precise. I know that -- I think there is a figure</p> <p>18 of 18 million on one of PWC's -- but I would have</p> <p>19 to look.</p> <p>20 Q. I am going to direct your attention</p> <p>21 again to exhibit 33, which is the October 28, 2010</p> <p>22 memo from Mr. Iacobescu to the Canary Wharf board.</p> <p>23 Did you play any part in drafting this memo?</p> <p>24 A. No, I didn't draft that memo.</p> <p>25 [REDACTED]</p>
<p style="text-align: right;">99</p> <p>1 PAMELA KENDALL</p> <p>2 building and so forth?</p> <p>3 A. Well, on September 30th, LBL had</p> <p>4 also agreed that we acknowledged -- without the</p> <p>5 wording in front of me I cannot be precise -- that</p> <p>6 they were happy with our making a claim of 262,</p> <p>7 plus or minus 5%, in the LBHI administration and</p> <p>8 those e-mails, the exchange, was made in the</p> <p>9 context that LBL recognise the importance of our</p> <p>10 claim against LBHI and documentation would need to</p> <p>11 be structured in such a way as to preserve our</p> <p>12 ability to make that claim.</p> <p>13 Q. Why did that involve having to make</p> <p>14 a claim in that amount against LBL, if you know?</p> <p>15 A. Because LBHI were making it a</p> <p>16 condition of the stipulation.</p> <p>17 Q. Do you know why?</p> <p>18 A. No, I don't. Sorry, could I add to</p> <p>19 that, to say that I understand that there may have</p> <p>20 been set off issues between LBL and LBHI.</p> <p>21 Q. Do you know how much unpaid rent,</p> <p>22 if any, there was as of September 30, 2010?</p> <p>23 MR. DE LEEUW: Objection to form.</p> <p>24 BY MR. ISAKOFF:</p> <p>25 Q. All right, I will change it to, any</p>	<p style="text-align: right;">101</p> <p>1 PAMELA KENDALL</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>

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<p style="text-align: right;">118</p> <p>1 PAMELA KENDALL</p> <p>2 A. Yes.</p> <p>3 Q. In this e-mail that appears right</p> <p>4 below the top, which is from you to Daniel Ehrmann</p> <p>5 and Deborah Cash of November 24th 2010; do you see</p> <p>6 that?</p> <p>7 A. Yes.</p> <p>8 Q. Here, again, you state: "...as</p> <p>9 previously stated this" -- in reference to the</p> <p>10 draft surrender documentation -- "provides for</p> <p>11 preservation of the claim in the sum of £262.5m so</p> <p>12 it has no impact on the guarantee." Do you see</p> <p>13 that?</p> <p>14 A. I do.</p> <p>15 Q. Is there any reference here as to</p> <p>16 the doubt that it will be accepted by LBL?</p> <p>17 MR. DE LEEUW: Objection to form.</p> <p>18 A. Well, we hadn't got the response</p> <p>19 from LBL at that point.</p> <p>20 BY MR. ISAKOFF:</p> <p>21 Q. Is it fair to say that you didn't</p> <p>22 know one way or the other whether this would be</p> <p>23 acceptable to LBL?</p> <p>24 A. Correct. Because we had the e-mail</p> <p>25 exchange at the end of September which suggested</p>	<p style="text-align: right;">120</p> <p>1 PAMELA KENDALL</p> <p>2 stipulation, which we were required to sign as</p> <p>3 part of the settlement of the surety claim. And</p> <p>4 that stipulation required us to agree in the LBL</p> <p>5 administration for a figure no less than the</p> <p>6 amount of the settlement claim. So the</p> <p>7 documentation provided to LBL met that</p> <p>8 requirement, meaning that we could be comfortable</p> <p>9 in signing the stipulation and moving forward to</p> <p>10 settlement of the claim.</p> <p>11 Q. I notice that your answer you did</p> <p>12 not reference the term "guarantee", as you do in</p> <p>13 your e-mail?</p> <p>14 A. Yes.</p> <p>15 Q. What is it about inserting a claim</p> <p>16 for £262.5 million against LBL in the draft</p> <p>17 surrender agreement makes it such that there is no</p> <p>18 impact on the guarantee?</p> <p>19 A. Well, the surety settlement that we</p> <p>20 had agreed in terms of the settlement with Alvarez</p> <p>21 and Marsal, as I said before, the -- it required</p> <p>22 documentation by way of the stipulation. So in</p> <p>23 order to arrive at a settlement, we needed to sign</p> <p>24 the stipulation, which contained the requirement</p> <p>25 for the 262.5 figure.</p>
<p style="text-align: right;">119</p> <p>1 PAMELA KENDALL</p> <p>2 that -- well, we understood that LBL were happy</p> <p>3 with our settling a claim in the sum of 262</p> <p>4 providing that the threshold of plus or minus 5%,</p> <p>5 so that level of claim was acceptable to them and</p> <p>6 I do believe that LBL's thinking may have been</p> <p>7 changing over this time and we got caught in the</p> <p>8 middle of all of it.</p> <p>9 BY MR. ISAKOFF:</p> <p>10 Q. Let me put the question to you</p> <p>11 simply. Is it fair to say that Canary Wharf did</p> <p>12 not know one way or the other as of November 24,</p> <p>13 2010 whether LBL found it acceptable that it would</p> <p>14 agree to a claim against it in the amount of</p> <p>15 £262.5 million?</p> <p>16 A. Correct.</p> <p>17 Q. Is it fair to say that you nowhere</p> <p>18 disclose that uncertainty in your e-mail to</p> <p>19 Mr. Ermine and Miss Cash, correct?</p> <p>20 A. Correct.</p> <p>21 Q. You say that: "This provides for</p> <p>22 preservation of the claim in the sum of £262.5m so</p> <p>23 [that] it has no impact on the guarantee." What</p> <p>24 did you mean by that?</p> <p>25 A. Well, we had been provided with the</p>	<p style="text-align: right;">121</p> <p>1 PAMELA KENDALL</p> <p>2 Q. Let me ask you a different</p> <p>3 question. When the word "guarantee" that appears</p> <p>4 in your e-mail ----</p> <p>5 A. Yes.</p> <p>6 Q. -- you were referencing LBHT's</p> <p>7 guarantee under Schedule 4 of the ----</p> <p>8 A. I was referring to Schedule 4.</p> <p>9 Q. Thank you. I will show you what</p> <p>10 has been previously marked as exhibit 37, which is</p> <p>11 Bates stamped CW 812 to 813. And I would like to</p> <p>12 turn your attention to -- first of all, does it</p> <p>13 appear that you got a copy of this?</p> <p>14 A. I did. I can see I did.</p> <p>15 Q. Okay. And if you'll look at the</p> <p>16 second page, the bottom e-mail from Tony Briam to</p> <p>17 Beatrice Taylor and Katie Bradford he says:</p> <p>18 "Following voicemail you left for me last night,</p> <p>19 and given the meeting tomorrow with PWC, I would</p> <p>20 be grateful if we could have a response by close</p> <p>21 of play today as to whether the draft Surrender</p> <p>22 Agreement is approved in terms of an acknowledged</p> <p>23 claim of £262.5m." Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. And do you know whether you got a</p>

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<p style="text-align: right;">122</p> <p>1 PAMELA KENDALL</p> <p>2 response that day?</p> <p>3 A. I cannot recall. I can see from</p> <p>4 the e-mail exchange there was a response.</p> <p>5 Q. I am showing you what has been</p> <p>6 previously marked as exhibit 4, which is CW18402,</p> <p>7 to 05. Again, would you agree that you are shown</p> <p>8 as having received this?</p> <p>9 MR. ISAKOFF: I will wait for any</p> <p>10 substantive questions until you have got it.</p> <p>11 MR. DE LEEUW: That is all right.</p> <p>12 A. Yes.</p> <p>13 BY MR. ISAKOFF:</p> <p>14 Q. Okay. Do you have any recollection</p> <p>15 of receiving this e-mail? If you would like to</p> <p>16 read it, feel free.</p> <p>17 A. I can't recall receiving this</p> <p>18 e-mail.</p> <p>19 Q. Is it fair to say that Ms. Bradford</p> <p>20 was rejecting the notion of changing the deal from</p> <p>21 a zero pound claim against LBL and refusing to</p> <p>22 accept an agreed claim of £262.5 million against</p> <p>23 LBL?</p> <p>24 A. That seems to be what paragraph 2</p> <p>25 is saying.</p>	<p style="text-align: right;">124</p> <p>1 PAMELA KENDALL</p> <p>2 Q. My question to you is: Now that</p> <p>3 that had been rejected, when, if ever, did you</p> <p>4 advise LBHI?</p> <p>5 A. Well, the -- we couldn't move</p> <p>6 forward with the discussions with LBHI, because of</p> <p>7 the stipulation. So, I can't recall exactly what</p> <p>8 was said to them but we couldn't confirm or sign</p> <p>9 off on the stipulation.</p> <p>10 Q. Is it fair to say that you have no</p> <p>11 recollection of making clear to LBHI that your</p> <p>12 prior statement that the draft that included the</p> <p>13 £262.5 million claim against LBL had been</p> <p>14 rejected?</p> <p>15 A. I did not send LBHI any follow-up</p> <p>16 as to how negotiations were progressing with LBL.</p> <p>17 Q. If you go down the page five</p> <p>18 paragraphs, Katie Bradford writes: "We recognise</p> <p>19 that your clients wish to amend the deal with LBL</p> <p>20 in order to reach agreement with LBHI and in</p> <p>21 particular to be able to provide the requested</p> <p>22 stipulation numbered 2 in the draft agreement."</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. Was that true?</p>
<p style="text-align: right;">123</p> <p>1 PAMELA KENDALL</p> <p>2 Q. Paragraph 2 where?</p> <p>3 A. Sorry, actually in the e-mail from</p> <p>4 Katie Bradford to Tony Briam, paragraph 3, she is</p> <p>5 saying that the acknowledgement of a valid claim</p> <p>6 of 262.5 million presented LBL and its</p> <p>7 administrators with a significant problem.</p> <p>8 Q. When, if ever, do you recall</p> <p>9 telling LBHI that LBL had rejected the suggestion</p> <p>10 that it agreed to a claim in the amount of</p> <p>11 £262.5 million against LBL?</p> <p>12 A. Well, LBHI had -- I believe the</p> <p>13 stipulation was with us to return to LBHI and we</p> <p>14 weren't in a position to sign the stipulation. So</p> <p>15 I cannot -- it was the fact that we could not go</p> <p>16 back and confirm the documentation with LBHI,</p> <p>17 because of this issue and I don't know what the</p> <p>18 timing on that was when they were expecting us to</p> <p>19 reply.</p> <p>20 Q. Here is my question to you. You</p> <p>21 had twice communicated to LBHI that you had sent</p> <p>22 draft documentation of a surrender agreement to</p> <p>23 LBL that included an agreed claim against LBL in</p> <p>24 the amount of £262.5 million?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">125</p> <p>1 PAMELA KENDALL</p> <p>2 A. Well, she talks about amending the</p> <p>3 deal with LBL but it had always been made clear,</p> <p>4 right in the beginning at the time of exchange of</p> <p>5 e-mails September, that our priority was our claim</p> <p>6 against LBHI and LBL were happy that we should</p> <p>7 make a claim in the sum set out in the e-mail, the</p> <p>8 262, against LBHI and they perfectly understood</p> <p>9 that we would need to structure documentation in</p> <p>10 such a way that we could go forward and complete</p> <p>11 on the settlement with LBHI. So she says, "amend</p> <p>12 the deal", I would take issue with that.</p> <p>13 Q. So are you seriously suggesting</p> <p>14 that even though it was part of the deal in</p> <p>15 September, on September 30 that the claim would be</p> <p>16 zero pounds against LBL that it is not an</p> <p>17 amendment to the deal that there be an agreed</p> <p>18 claim for £262.5 million against LBL?</p> <p>19 MR. DE LEEUW: Sir, hold on.</p> <p>20 I object that type of question is totally</p> <p>21 improper, the tone is improper, the words you used</p> <p>22 and it is disrespectful to the witness. Now, with</p> <p>23 that objection, you can answer.</p> <p>24 MR. ISAKOFF: That's an outrageous</p> <p>25 objection, outrageous. Please, answer the</p>

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<p style="text-align: right;">146</p> <p>1 PAMELA KENDALL</p> <p>2 confirmation, they would want to know that we had</p> <p>3 received that confirmation and we know that they</p> <p>4 didn't want us to serve notice, because I know</p> <p>5 that, you know, right at the last minute in the</p> <p>6 negotiations we had to put that warranty in the</p> <p>7 agreement.</p> <p>8 Q. Isn't it ----</p> <p>9 A. But I can't comment more than that.</p> <p>10 I cannot recall more than that.</p> <p>11 Q. Isn't it a fact that Canary Wharf</p> <p>12 knew no later than December 3, from this e-mail,</p> <p>13 that JP Morgan Chase did not want notice under</p> <p>14 section 7(a), to be served on LBHI?</p> <p>15 A. They did not want a notice to be</p> <p>16 served on LBHI. I don't know what when that was</p> <p>17 raised with Canary Wharf.</p> <p>18 Q. It was certainly raised no later</p> <p>19 than December 3, correct?</p> <p>20 A. I can't answer you that, because</p> <p>21 this is all very colloquial. I don't know, he</p> <p>22 could quite well be referring to the confirmation</p> <p>23 that we had not yet had a reply on.</p> <p>24 THE VIDEOGRAPHER: Sorry, there are</p> <p>25 two minutes of tape left.</p>	<p style="text-align: right;">148</p> <p>1 PAMELA KENDALL</p> <p>2 existing Lehman lease."</p> <p>3 A. Yes.</p> <p>4 Q. He says: "As I made clear on the</p> <p>5 telephone whilst this may be a step forward this</p> <p>6 will not be sufficient for JPM to proceed to a</p> <p>7 simultaneous exchange and completion where notice</p> <p>8 has been served by CW under the Lehman lease</p> <p>9 guarantee." Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Did that precede what, I believe,</p> <p>12 you have characterised as an e-mail confirmation</p> <p>13 that LBHI would not elect to take a new lease?</p> <p>14 A. I believe it did.</p> <p>15 Q. And when did you ever tell LBHI</p> <p>16 that JP Morgan was raising an objection to Canary</p> <p>17 Wharf's serving a notice under section 7(a) of</p> <p>18 Schedule 4 of the LBL lease?</p> <p>19 MR. DE LEEUW: Objection to form.</p> <p>20 A. There was no reason to discuss that</p> <p>21 with LBHI.</p> <p>22 BY MR. ISAKOFF:</p> <p>23 Q. Is it fair to say that you never</p> <p>24 discussed it with LBHI?</p> <p>25 A. No.</p>
<p style="text-align: right;">147</p> <p>1 PAMELA KENDALL</p> <p>2 BY MR. ISAKOFF:</p> <p>3 Q. Isn't he saying here that</p> <p>4 confirmation is not sufficient if there has been a</p> <p>5 notice served by Canary Wharf under the Lehman</p> <p>6 lease guarantee?</p> <p>7 MR. DE LEEUW: Objection. Go</p> <p>8 ahead.</p> <p>9 A. I can't confirm that.</p> <p>10 MR. ISAKOFF: We will take a break.</p> <p>11 (Off the record at 2.29)</p> <p>12 (Back on the record at 2.47)</p> <p>13 BY MR. ISAKOFF:</p> <p>14 Q. Would you turn again to exhibit 9,</p> <p>15 at the same e-mail we have been looking at on page</p> <p>16 2 with the Bates number 714?</p> <p>17 A. I have that.</p> <p>18 Q. I would like you to turn to the</p> <p>19 page that has the e-mail we have been looking at.</p> <p>20 This e-mail of December 3, from Jeremy Clay, where</p> <p>21 he says: "I note CW are still pushing for the</p> <p>22 confirmation." -- referring to Mr. Turner's</p> <p>23 statement that "...CW are still pushing for</p> <p>24 confirmation that LBHI have no interest in taking</p> <p>25 up a new Lease following forfeiture of the</p>	<p style="text-align: right;">149</p> <p>1 PAMELA KENDALL</p> <p>2 Q. Sorry, I didn't hear the answer.</p> <p>3 A. No -- yes, it is fair.</p> <p>4 Q. Is it fair to say that at least one</p> <p>5 of your purposes in engaging in these repeated</p> <p>6 e-mails asking -- well, let me withdraw that. Is</p> <p>7 it fair to say that in and about early December</p> <p>8 2010, after the fact of the JP Morgan Canary Wharf</p> <p>9 transaction had received a lot of press at the end</p> <p>10 of November 2010, that LBHI was asking to review</p> <p>11 documentation relating to the Canary Wharf</p> <p>12 JP Morgan transaction?</p> <p>13 A. Yes. LBHI asked to review</p> <p>14 documentation. They wanted to understand the</p> <p>15 financial basis of the deal.</p> <p>16 Q. They wanted to see the</p> <p>17 documentation, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Is it fair to say that Canary Wharf</p> <p>20 took the position with LBHI that it would not</p> <p>21 share that information unless, 1, LBHI agreed to</p> <p>22 confidentiality, and 2, confirm that it would not</p> <p>23 take a lease in place of LBL?</p> <p>24 A. That's right.</p> <p>25 Q. Is it fair to say that in seeking</p>

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<p style="text-align: right;">150</p> <p>1 PAMELA KENDALL</p> <p>2 what you have described as confirmation, that LBHI</p> <p>3 wouldn't elect to take a lease were one tendered,</p> <p>4 that you were seeking to gain an advantage in</p> <p>5 terms of your claim against LBHI?</p> <p>6 MR. DE LEEUW: Objection to form.</p> <p>7 A. Not an advantage. We had a claim</p> <p>8 against LBHI and the e-mail exchange only served</p> <p>9 to assist in the making of that claim.</p> <p>10 BY MR. ISAKOFF:</p> <p>11 Q. Isn't it fair to say that you were</p> <p>12 relying on that e-mail exchange as the basis of</p> <p>13 what you were claiming is anticipatory repudiation</p> <p>14 of an obligation to assume a lease had one been</p> <p>15 tendered?</p> <p>16 A. It was clear to us that LBHI would</p> <p>17 not have taken the lease and they didn't want one.</p> <p>18 Q. Is it fair to say that you were and</p> <p>19 are relying on that e-mail exchange as the basis</p> <p>20 for what you are claiming is anticipatory</p> <p>21 repudiation of an obligation to assume a lease had</p> <p>22 one been tendered?</p> <p>23 A. Yes, correct.</p> <p>24 Q. Is it fair to say that at the time</p> <p>25 that you were using LBHI's desire to see the</p>	<p style="text-align: right;">152</p> <p>1 PAMELA KENDALL</p> <p>2 and take precedence over the JPM transaction and,</p> <p>3 therefore, it would be something that you would</p> <p>4 want cleared off before you introduced JPM and</p> <p>5 gave them the documentation on JPM. It was</p> <p>6 totally discrete if you like, because of the deal</p> <p>7 that LBHI was being offered was not the JPM deal</p> <p>8 but it was the Lehman's original transaction.</p> <p>9 Q. Isn't it fair to say that at the</p> <p>10 time you were seeking the e-mail confirmation,</p> <p>11 during this week following the December 3, 2010</p> <p>12 e-mail from Jeremy Clay that Canary Wharf had no</p> <p>13 intention of serving a section 7(a) notice under</p> <p>14 Schedule 4 of the LBL lease?</p> <p>15 MR. DE LEEUW: Objection to form.</p> <p>16 A. I can't recall exactly but I think</p> <p>17 we would have been wary of serving a notice if</p> <p>18 that delayed matters, given that there was a</p> <p>19 window of opportunity with JPM.</p> <p>20 BY MR. ISAKOFF:</p> <p>21 Q. So when you say "wary" ----</p> <p>22 A. Yes.</p> <p>23 Q. -- isn't it true that you had</p> <p>24 determined that you would not serve such a notice?</p> <p>25 A. I can't recall.</p>
<p style="text-align: right;">151</p> <p>1 PAMELA KENDALL</p> <p>2 JP Morgan transaction documents as leverage to</p> <p>3 obtain this "confirmation" that you had no</p> <p>4 intention of serving any such notice under</p> <p>5 Schedule 4 of the LBL lease?</p> <p>6 MR. DE LEEUW: Objection to form.</p> <p>7 A. Sorry. I am going to have to ask</p> <p>8 you to repeat the question.</p> <p>9 BY MR. ISAKOFF:</p> <p>10 Q. Is it fair to say that at the time</p> <p>11 you were using LBL's desire to see the JP Morgan</p> <p>12 documents as leverage to obtain this</p> <p>13 "confirmation" that you had no intention of</p> <p>14 serving any such notice under Schedule 4 of the</p> <p>15 LBL lease?</p> <p>16 MR. DE LEEUW: Objection to form.</p> <p>17 A. Dealing with the first part of your</p> <p>18 question, it seemed an appropriate time to raise</p> <p>19 the issue of a new lease with LBHI, because if</p> <p>20 they had wanted to take a lease -- the slim chance</p> <p>21 they had wanted to take a lease -- you know, we</p> <p>22 would have been happy to agree that with them and</p> <p>23 obviously, if they had wanted to do that, that</p> <p>24 would have prohibited and made impossible the deal</p> <p>25 with JPM. So, it was something that would happen</p>	<p style="text-align: right;">153</p> <p>1 PAMELA KENDALL</p> <p>2 Q. It would be unwaryness ----</p> <p>3 MR. DE LEEUW: Excuse me, stop</p> <p>4 right there. Just stop, go on and ask another</p> <p>5 question. I am not going to have you debate with</p> <p>6 this witness. Go and ask another question.</p> <p>7 MR. ISAKOFF: That's incredible.</p> <p>8 MR. DE LEEUW: I'm tired of hearing</p> <p>9 you debate. The witness has just given her</p> <p>10 recollection of the events. Now you just want to</p> <p>11 debate with her. I'm trying to keep it away from</p> <p>12 privilege, but now I'm trying to keep it away from</p> <p>13 you just debating with her. She is not an expert</p> <p>14 being offered for the opinions in this case. Just</p> <p>15 move on to the next question.</p> <p>16 MR. ISAKOFF: I'm not asking expert</p> <p>17 opinion at all.</p> <p>18 MR. DE LEEUW: Just move on to the</p> <p>19 next question, sir.</p> <p>20 BY MR. ISAKOFF:</p> <p>21 Q. What do you mean by "wary"?</p> <p>22 A. Well, in serving a notice, it's a</p> <p>23 formal procedure. It's going to take time in</p> <p>24 respect of the response -- it's formalities.</p> <p>25 Q. And in addition, no notice had even</p>

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<p>154</p> <p>1 PAMELA KENDALL</p> <p>2 been drafted, correct?</p> <p>3 MR. DE LEEUW: Objection. Asked</p> <p>4 and answered.</p> <p>5 A. As far as I'm aware.</p> <p>6 BY MR. ISAKOFF:</p> <p>7 Q. And you're also aware that in order</p> <p>8 to serve such a notice on LBHI, which was in</p> <p>9 bankruptcy proceedings in the US, that you would</p> <p>10 have to seek permission of the court or serving</p> <p>11 such a notice would have violate the automatic</p> <p>12 stay of the US bankruptcy ----</p> <p>13 MR. DE LEEUW: Objection. Asked</p> <p>14 and answered. You asked her about this subject</p> <p>15 and she already testified that she recalled,</p> <p>16 generally, that there might have been some</p> <p>17 discussions with lawyers about the subject. She</p> <p>18 doesn't recall what they are. And now you're</p> <p>19 asking her, "Isn't it true that all the things</p> <p>20 that you have testified to that you don't recall</p> <p>21 and you would have discussed with lawyers is in</p> <p>22 fact true, because I, Mr. Peter Mr. Isakoff</p> <p>23 believe them." So, just move on to the next</p> <p>24 question. I am tired of the debate. Let's just</p> <p>25 move on to question. This witness can tell you</p>	<p>156</p> <p>1 PAMELA KENDALL</p> <p>2 you were being advised at this point by Clifford</p> <p>3 Chance or Sullivan and Cromwell concerning issues</p> <p>4 relating to the US Bankruptcy Code that you had no</p> <p>5 intention at the very time you were seeking</p> <p>6 confirmation that LBHI would not elect to accept a</p> <p>7 lease were one tendered, that you had no</p> <p>8 intention, that Canary Wharf had no intention of</p> <p>9 serving a section 7(a) notice?</p> <p>10 MR. DE LEEUW: Objection to form.</p> <p>11 Mischaracterises prior testimony; you can answer</p> <p>12 if you can.</p> <p>13 A. I can't recall. I can't recall.</p> <p>14 BY MR. ISAKOFF:</p> <p>15 Q. Isn't it a fact that you were</p> <p>16 trying to set up a claim for anticipatory</p> <p>17 repudiation for an obligation to accept a lease</p> <p>18 that would have been triggered upon a notice that</p> <p>19 you had no intention of serving?</p> <p>20 A. Well, the e-mail was sent certainly</p> <p>21 with paragraph 4 of the schedule in mind, and we</p> <p>22 believed that we had done sufficient to give us</p> <p>23 any additional right that that paragraph afforded</p> <p>24 us.</p> <p>25 Q. And that was one of your purposes</p>
<p>155</p> <p>1 PAMELA KENDALL</p> <p>2 her recollection of events. You shouldn't just</p> <p>3 debate with her a subject that she has testified</p> <p>4 already.</p> <p>5 MR. ISAKOFF: You know, I really</p> <p>6 would have thought they taught you deposition</p> <p>7 procedure at law school and particularly one as</p> <p>8 fine as the one I went to but I'm shocked ----</p> <p>9 MR. DE LEEUW: Sir, please stop</p> <p>10 your extremely disrespectful tone. Just move on.</p> <p>11 MR. ISAKOFF: I'm just shocked that</p> <p>12 you would proceed to try to defend a deposition in</p> <p>13 this fashion.</p> <p>14 MR. DE LEEUW: I have no concern</p> <p>15 about your shock, sir, go on.</p> <p>16 MR. ISAKOFF: I can see that,</p> <p>17 otherwise you may conduct yourself a little</p> <p>18 differently.</p> <p>19 BY MR. ISAKOFF:</p> <p>20 Q. Isn't it true, Ms. Kendall, given</p> <p>21 your wariness as a result of what Mr. Clay</p> <p>22 expressed in terms of JP Morgan's concern over you</p> <p>23 serving a section 7(a) notice and the fact that no</p> <p>24 such notice had at that point been drafted, and</p> <p>25 that, without getting into the substance of it,</p>	<p>157</p> <p>1 PAMELA KENDALL</p> <p>2 behind sending these e-mails to Mr. Krasnow and</p> <p>3 Mr. Rupert Jones at my law firm, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Once forfeiture took place on</p> <p>6 December 10th 2010, was one of the reasons why you</p> <p>7 did not, thereafter, at any time within the 180</p> <p>8 days following forfeiture, serve a notice under</p> <p>9 section 7(a) of Schedule 4 of the LBL lease that</p> <p>10 you were concerned that that might spoil the JPM</p> <p>11 transaction?</p> <p>12 A. Sorry, that we didn't serve the</p> <p>13 notice? The notice pursuant to paragraph ----</p> <p>14 Q. Section 7(a)?</p> <p>15 A. Section 7(a) notice ----</p> <p>16 Q. Of Schedule 4 of the LBL lease.</p> <p>17 A. We had to ----</p> <p>18 Q. Was one of the factors that you</p> <p>19 were concerned that serving such a notice would</p> <p>20 spoil a JPM transaction?</p> <p>21 A. At some point in December, we had</p> <p>22 agreed with JPM that we would not be serving</p> <p>23 notice. So that had gone into the deal. So we</p> <p>24 would have been in breach of what we had agreed</p> <p>25 once the deal had concluded.</p>

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<p style="text-align: right;">162</p> <p>1 PAMELA KENDALL</p> <p>2 A. I don't know. I'm not aware that</p> <p>3 they were.</p> <p>4 Q. These provisions include on page</p> <p>5 26, 7.16.4, which prohibits Canary Wharf from</p> <p>6 serving a section 7(a) notice on LBHI, correct?</p> <p>7 A. Correct.</p> <p>8 Q. But it allows Canary Wharf to seek</p> <p>9 payment under paragraph 7(b), correct?</p> <p>10 A. Yes.</p> <p>11 Q. Do you think that LBHI would have</p> <p>12 been interested in seeing that provision?</p> <p>13 MR. DE LEEUW: Objection to form.</p> <p>14 A. It had no bearing on the settlement</p> <p>15 with LBHI. So, to our mind, it did not have a</p> <p>16 relevance.</p> <p>17 BY MR. ISAKOFF:</p> <p>18 Q. Was it privileged in any way, in</p> <p>19 any kind of legal sense?</p> <p>20 MR. DE LEEUW: Objection. That</p> <p>21 calls for a legal conclusion. Come on ask a</p> <p>22 question ----</p> <p>23 MR. ISAKOFF: All right. Let's</p> <p>24 take a few minutes break. We will see if we are</p> <p>25 done.</p>	<p style="text-align: right;">164</p> <p>1 PAMELA KENDALL</p> <p>2 LBHI-CW0013667, a portion of that page and the</p> <p>3 -- all of the next three pages have been</p> <p>4 redacted. Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Do you see that essentially what</p> <p>7 has been redacted is all of the provisions under</p> <p>8 7.16?</p> <p>9 A. I do.</p> <p>10 Q. I'd like you to look at</p> <p>11 Mr. Dietderich's cover letter, where he says at</p> <p>12 the conclusion of the second paragraph:</p> <p>13 "Additionally, certain portions of the enclosed</p> <p>14 documents have been redacted to prevent disclosure</p> <p>15 of privileged legal advice in which the parties</p> <p>16 share a common legal interest." Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. What about 7.16 of the SPA consists</p> <p>19 of privileged legal advice, if anything?</p> <p>20 MR. DE LEEUW: You shouldn't be</p> <p>21 giving your legal opinion. If you have an</p> <p>22 understanding from other sources, you can but I do</p> <p>23 not see how you could.</p> <p>24 A. I'm relying on my external counsel</p> <p>25 to tell me what is privileged and what is not and</p>
<p style="text-align: right;">163</p> <p>1 PAMELA KENDALL</p> <p>2 (Off the record at 3.10)</p> <p>3 (On the record at 3.18)</p> <p>4 BY MR. ISAKOFF:</p> <p>5 Q. Ms. Kendall, I would like to show</p> <p>6 you what has been previously marked as exhibits 17</p> <p>7 and 18. Exhibit 17 is a cover letter from</p> <p>8 Andrew Dietderich to my now retired partner</p> <p>9 Mr. Krasnow. Do you know who Mr. Dietderich is?</p> <p>10 A. Yes, he is a lawyer at Sullivan &</p> <p>11 Cromwell.</p> <p>12 Q. He was representing Canary Wharf,</p> <p>13 correct?</p> <p>14 A. He was.</p> <p>15 Q. In this letter, he was sending some</p> <p>16 information that LBL had been requesting relating</p> <p>17 to its claims, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Exhibit 18, which I represent to</p> <p>20 you as one of the documents that came with this</p> <p>21 letter, is a version of a final SPA that we've</p> <p>22 been looking at as exhibit 15, correct?</p> <p>23 A. Correct.</p> <p>24 Q. If you'll turn to page 24 of</p> <p>25 exhibit 18, which we begins with Bates number</p>	<p style="text-align: right;">165</p> <p>1 PAMELA KENDALL</p> <p>2 deal with it appropriately.</p> <p>3 BY MR. ISAKOFF:</p> <p>4 Q. Let me just ask you this question.</p> <p>5 Are you aware of contract provisions in a business</p> <p>6 document being privileged legal advice?</p> <p>7 MR. DE LEEUW: You shouldn't be</p> <p>8 giving your legal opinion on that. Just tell if</p> <p>9 you have an awareness one way or the other.</p> <p>10 A. I don't. I would rely on external</p> <p>11 counsel to advise me when it comes to matters of</p> <p>12 privilege.</p> <p>13 BY MR. ISAKOFF:</p> <p>14 Q. Isn't it a fact that Canary Wharf</p> <p>15 and it counsel were just covering up the existence</p> <p>16 of these provisions and hoping never to have to</p> <p>17 reveal them to LBHI?</p> <p>18 MR. DE LEEUW: Objection to form.</p> <p>19 You can answer if you know.</p> <p>20 A. These provisions were removed by</p> <p>21 Sullivan & Cromwell and I took to be a perfectly</p> <p>22 proper way of dealing with these things and</p> <p>23 sending the document on to LBHI.</p> <p>24 BY MR. ISAKOFF:</p> <p>25 Q. Are you suggesting that you were</p>

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<p style="text-align: right;">166</p> <p>1 PAMELA KENDALL</p> <p>2 aware at the time that 7.16 had been redacted when</p> <p>3 it was being sent to LBHI in January 2011?</p> <p>4 A. I think they had told me they had</p> <p>5 taken it out, but I can't recall exactly.</p> <p>6 MR. ISAKOFF: No further questions.</p> <p>7</p> <p>8 REDIRECT EXAMINATION BY MR. DE LEEUW</p> <p>9</p> <p>10 BY MR. DE LEEUW:</p> <p>11 Q. Ms. Kendall, I have only a few</p> <p>12 questions to follow up with you. Earlier, I think</p> <p>13 there was a document where you used the word</p> <p>14 "guarantee" and Mr. Isakoff asked you if that</p> <p>15 reference was a reference to Schedule 4 of the</p> <p>16 Lehman lease. Do you recall that?</p> <p>17 A. Yes.</p> <p>18 Q. When you used the word "guarantee"</p> <p>19 to refer to Schedule 4 of the Lehman lease?</p> <p>20 A. Yes, I have used that terminology</p> <p>21 before. I'm not making a distinction between an</p> <p>22 indemnity or a guarantee. I use the word</p> <p>23 colloquially, so to my mind it is an indemnity</p> <p>24 guarantee.</p> <p>25 MR. DE LEEUW: Thank you. Could</p>	<p style="text-align: right;">168</p> <p>1 PAMELA KENDALL</p> <p>2 of Canary Wharf's business?</p> <p>3 MR. ISAKOFF: Object to form.</p> <p>4 BY MR. DE LEEUW:</p> <p>5 Q. Let me ask you: Do you know what</p> <p>6 the document is that is attached to Miss Cash's</p> <p>7 e-mail which is exhibit 56?</p> <p>8 A. I do. This was the document that</p> <p>9 was sent to us pending the confirmation we</p> <p>10 expected to get from the unsecured creditors</p> <p>11 committee and in order to maintain momentum</p> <p>12 Deborah Cash sent us a stipulation and told us</p> <p>13 that we would be required to sign this as part and</p> <p>14 parcel of agreeing the 399 settlement.</p> <p>15 Q. So are you saying a stipulation for</p> <p>16 what; what are you referring to?</p> <p>17 A. This stipulation related to the 399</p> <p>18 settlement.</p> <p>19 Q. With LBHI?</p> <p>20 A. With LBHI.</p> <p>21 Q. This was a draft settlement for</p> <p>22 your review?</p> <p>23 A. Yes.</p> <p>24 Q. Miss Cash, who does she represent?</p> <p>25 A. Alvarez & Marsal.</p>
<p style="text-align: right;">167</p> <p>1 PAMELA KENDALL</p> <p>2 I ask the court reporter to mark this next</p> <p>3 exhibit, exhibit 56?</p> <p>4 (Exhibit 56 was marked for identification)</p> <p>5 Q. It's a document bearing LBHI-CW5810</p> <p>6 through 5817. Do you have that document in front</p> <p>7 of you Ms. Kendall?</p> <p>8 A. I do.</p> <p>9 Q. You see this is an e-mail from</p> <p>10 Deborah Cash at Alvarez and Marsal to yourself at</p> <p>11 dated November 2nd 2010 at 1.36 p.m.; is that</p> <p>12 right?</p> <p>13 A. Correct.</p> <p>14 Q. Did you receive exhibit 56 in the</p> <p>15 ordinary course of your business?</p> <p>16 A. I did.</p> <p>17 Q. Were you conducting the ordinary</p> <p>18 course of your business when you received exhibit</p> <p>19 56?</p> <p>20 A. Sorry?</p> <p>21 Q. Were you engaging in your business</p> <p>22 activities at Canary Wharf when you received 56?</p> <p>23 A. Yes, I was.</p> <p>24 Q. Do you believe that a copy of</p> <p>25 exhibit 56 was maintained in the ordinary course</p>	<p style="text-align: right;">169</p> <p>1 PAMELA KENDALL</p> <p>2 Q. What party were they representing?</p> <p>3 A. LBHI.</p> <p>4 Q. Okay. Could I ask you to turn to</p> <p>5 page with Bates number 5814 of exhibit 56. Do you</p> <p>6 have that?</p> <p>7 A. I do.</p> <p>8 Q. Do you see paragraph 2 states that:</p> <p>9 "The Management Company and the Landlord represent</p> <p>10 that their respective claims against the Tenant</p> <p>11 arising under or relating to the Lease have not</p> <p>12 been disallowed or expunged in the Tenant</p> <p>13 Proceeding, nor allowed, recognized, or</p> <p>14 acknowledged in the Tenant Proceeding in an amount</p> <p>15 less than the amounts set forth in paragraph 4</p> <p>16 hereof." Have I read that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. "Paragraph 4, hereof" refers to</p> <p>19 what?</p> <p>20 A. That sets out the settlement</p> <p>21 amounts, which were the allowed claims and the</p> <p>22 figure there amounts to -- it's just over \$399</p> <p>23 million.</p> <p>24 Q. Do you know what paragraph 2 is</p> <p>25 referring to or did you -- strike that. What was</p>

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